

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JAMES LEE HANKINS, Petitioner

V.

NO. 3:95CV015-S-A

CLANCEY COTTON, ET AL, Respondents

O P I N I O N

This cause comes before this court on the petition of James Lee Hankins for a writ of habeas corpus pursuant to 28 U.S.C. §2254. Petitioner does not specify what relief he seeks, instead stating "I was misrepresented and sentenced unlawfully for a crime I didn't commit."

Petitioner states that he was convicted in November, 1994, in Holly Springs, Mississippi, for two counts of robbery. He was sentenced to eight years imprisonment. He states that he did not appeal the case or file any other petitions, applications, or motions to the state court system.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

It is well settled that a state prisoner seeking habeas corpus relief in federal court is first required to exhaust his available

state remedies. 28 U.S.C. §2254(b) and (c)<sup>1</sup>; see also Rose v. Lundy, 455 U.S. 509 (1982). More specifically, a petitioner must present his claims to the state courts in such a fashion as to afford those courts a fair opportunity to rule on the merits. Picard v. Conner, 404 U.S. 270 (1971); Dispensa v. Lynaugh, 847 F.2d 211, 217 (5th Cir. 1988). A habeas corpus petitioner must provide the state's highest court with a fair opportunity to pass upon the issues raised in the petition for federal habeas corpus relief. Dupuy v. Butler, 837 F.2d 699, 702 (5th Cir. 1988) (citing Carter v. Estelle, 677 F.2d 427, 443-44 (5th Cir. 1982)).

Petitioner has an available state remedy under the Mississippi Uniform Post Conviction Collateral Relief Act, §99-39-1, et seq. , Miss. Code Ann. (1993 Supp.)

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<sup>1</sup> 28 U.S.C. §2254(b) and (c) provide:

- (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
- (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

After exhausting his available state remedies, petitioner will then be entitled to proceed in the federal district court.

A final judgment in accordance with this opinion will be entered.

THIS the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

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CHIEF JUDGE